HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.4349 of 2007

Between:

The Engineer-in-Chief (R & B),
Admn. & Roads, A.P., Erram Manzil,
Hyderabad and three others.

… Petitioners

And

Shri N. Venkateswarlu

… Respondent

:: ORDER::

Counsel for the Petitioners: Government Pleader for Services-II

April 30, 2007

Per G.S. Singhvi, CJ

In this petition, the petitioners have prayed for setting aside order dated 10-11-2006 vide which the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') allowed the application filed by respondent – N. Venkateswarlu and quashed his reversion from the post of Assistant Executive Engineer to that of Work Inspector Grade-IV.

The respondent joined service of Roads and Buildings Department in 1985 as Technical Work Inspector. In February, 1998, he was absorbed in Work Charged Establishment as Work Inspector Grade-IV. After six years, the State Government issued Memo No.6759/Ser.III.1/98-9, dated 25-4-2001 whereby promotion of the respondent as Work Inspector Grade-IV was cancelled. Superintending Engineer (R & B), Warangal issued consequential order dated 30-9-2002. The respondent challenged both the orders in O.A.No.9252 of 2002, which was allowed by the Tribunal vide its judgment dated 27-6-2005. Thereafter, vide order dated 11-7-2005, the respondent was promoted as Assistant Executive Engineer. For the sake of reference, that order is reproduced below:

OFFICE OF THE ENGINEER-IN-CHIEF (R & B)
ERRUMMANZIL: A.P. : HYDERABAD – 82.

PROCEEDINGS No.Services-IV(3)/2004-2, dated 11-07-2005

Sub:- Establishment – R & B Department – Draughtsman and Work Inspectors – Promotion as Temporary Assistant Executive Engineer (R & B) Zone-V – Orders – Issued.

Ref: 1. G.O.Ms.No.103, T, R &B (S.II) Department, dated 22-5-1998.
2. G.O.Ms.No.104, T, R & B (S.II) Department, dated 23-5-1998.
3. G.O.Ms.No.23, T, R & B (S.II) Department,

dt.17-2-2003

4. Government T, R & B Memo No. 50542/S.II-2/03-4, dt.17-11-03.
5. G.O.Ms.No.193, G.A. Dept., dated 16-04-1999.
6. Government T, R & B Memo No.42496/Ser.III-2/03, dt.21-04-04.
7. G.O.Ms.No.5/SW (SW ROR – 1) Dept. dated 14-2-2003
8. G.O.Ms.No.21/SW (SW ROR – 1) Dept., dated 18-3-2003
9. G.O.Ms.No.2/SW (SW ROR – 1) Dept., dated 9-1-2004.

…

In pursuance of the orders issued in the references 1st to 9th cited and under Rule 10 (1)(i) of General Rules for A.P. State and Subordinate Service Rules, Sri N. Venkateswarlu, Work Inspector Grade-IV working in (R & B) Division, Warangal is temporarily promoted as Assistant Executive Engineer (R & B) in Zone-V with effect from the date of joining duty in the time scale of Pay of Rs. 5980 – 150 – 6150 – 200 – 7150 – 250 – 8400 – 300 – 9900 – 350 – 11650 – 450 – 12100/- and posted to (R & B) Section – II, Kagaznagar of (R & B) Division, Mancherial in the existing vacancy subject to the following conditions:

i) The promotion now ordered is in the exigencies of service and on purely temporary basis.

ii) He is liable to be replaced/reverted without assigning any reasons and without any notice.

iii) The promotion now ordered is purely temporary and does not confer any service right for continuing or for regular appointment.

2) It is informed that he is not eligible to draw second and subsequent increment unless he possesses the Accounts test for P.W.D. officers and subordinates.

3) He is directed to join on promotion as Assistant Executive Engineer (R & B) within 15 days from the date of receipt of the orders of his promotion in terms of orders issued in G.O. 5th cited. Failure to do so will entail him to forfeit his

right for promotion as Assistant Executive Engineer (R & B).

CH. RAMULU
DEPUTY ENGINEER-IN-CHIEF (R & B) ADMN."

After about four months, Engineer-in-Chief (R & B), Andhra Pradesh (petitioner No.1) issued notice dated 6-11-2005 to the respondent proposing to cancel his promotion to the post of Assistant Executive Engineer. This was followed by Memo dated 6-12-2005 vide which petitioner No.1 confirmed the proposal contained in notice dated 6-11-2005.

The respondent questioned the cancellation of his promotion in O.A.No.7589 of 2005. He pleaded that petitioner No.1 could not have cancelled his promotion simply because the issue relating to his promotion to the post of Work Inspector Grade-IV was sub judice.

By an interim order dated 21-11-2005, the Tribunal stayed the reversion of the respondent. Consequently, he was allowed to continue on the post of Assistant Executive Engineer.

After hearing the counsel for the parties, the Tribunal allowed the application and quashed the decision contained in Memo dated 6-12-2005. The Tribunal held that the ground on which petitioner No.1 ordered reversion of the applicant (the respondent herein) from the post of Assistant Executive Engineer was legally untenable inasmuch as pendency of the issue regarding regularization on the post of Work Inspector Grade-IV before the government had no bearing on his promotion to the post of Assistant Executive Engineer. The Tribunal further held that once the cancellation of the respondent's regularization on the post of Work Inspector Grade-IV was set aside, the government could not have ordered his reversion on the premise that the matter was pending before it.

We have heard learned Government Pleader for Services-II and perused the record. In our opinion, the order under challenge does not suffer from any jurisdictional infirmity or error of law apparent on the face of the record and the same does not call for interference under Article 226 of the Constitution of India. Admittedly, orders dated 25-4-2001 and 30-9-2002 issued by the State Government and Superintending Engineer (R & B), Warangal respectively canceling the respondent's regularization on the post of Work Inspector Grade-IV were set aside by the Tribunal in O.A.No.9252 of 2002. It is neither the pleaded case of the petitioners nor the learned Government Pleader has argued that the order passed by the Tribunal in O.A.No.9252 of 2002 has been stayed by this Court or the Supreme Court. Therefore, merely because the State Government felt that the issue relating to regularization of the respondent on the post of Work Inspector Grade-IV has not acquired finality, the respondent could not have been reverted from the post of Assistant Executive Engineer by assuming that his regularization on the lower post i.e. Work Inspector Grade-IV is not illegal.

For the reason stated above, the writ petition is dismissed. However, it is made clear that this order and the one passed by the Tribunal will not preclude the State Government/competent authority from taking action in accordance with law in the matter of the respondent's promotion to the post of Assistant Executive Engineer.

As a sequel to the dismissal of the writ petition, WPMP No. 5552 of 2007 filed by the petitioners for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

April 30, 2007

C.V. NAGARJUNA REDDY, J

SVS